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Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0111

Re: STB Finance Docket No. 35506, *Western Coal Traffic League – Petition for a Declaratory Order*

NOTICE OF INTENT TO PARTICIPATE

Dear Ms. Brown:

Pursuant to the Board's decision served on February 16, 2012 in the above-referenced proceeding ("Decision"), this letter constitutes the joint notice of the Western Coal Traffic League, American Public Power Association, Edison Electric Institute, National Association of Regulatory Utility Commissioners, National Rural Electric Cooperative Association, Western Fuels Association, Inc., and Basin Electric Power Cooperative, Inc. (collectively "Coal Shippers/NARUC") to participate in the hearing scheduled for March 22, 2012 in Washington D.C.

The proposed speakers on behalf of Coal Shippers/NARUC are Thomas D. Crowley, President of L.E. Peabody & Associates, Inc., Dr. John W. Wilson, President of J.W. Wilson & Associates, Inc., and the undersigned counsel for Coal Shippers/NARUC, John H. LeSeur. Coal Shippers/NARUC request that 60 minutes be allotted to its representatives to address the Board. If the Board schedules Coal Shippers/NARUC's presentation before that of the railroad parties, Coal Shippers/NARUC request that 15 minutes of Coal Shippers/NARUC's time be reserved for rebuttal.

As requested in the Board's Decision, Coal Shippers/NARUC attach a summary of their representatives' intended testimony.

Respectfully submitted,

John H. LeSeur
An Attorney for Coal Shippers/
NARUC

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

WESTERN COAL TRAFFIC LEAGUE – PETITION FOR DECLARATORY ORDER	)))))	Finance Docket No. 35506

SUMMARY OF INTENDED TESTIMONY BY THOMAS D. CROWLEY, DR. JOHN W. WILSON, AND JOHN H. LESEUR ON BEHALF OF THE WESTERN COAL TRAFFIC LEAGUE, AMERICAN PUBLIC POWER ASSOCIATION, EDISON ELECTRIC INSTITUTE, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION, WESTERN FUELS ASSOCIATION, INC., AND BASIN ELECTRIC POWER COOPERATIVE, INC.

This case raises a fundamental regulatory question: whether shippers that are captive to BNSF Railway Company ("BNSF") should pay higher rail rates simply because BNSF's ownership has changed hands. The shipping community, including all of the above-named organizations, along with all elected representatives participating in this proceeding, agree: the answer is no.

Berkshire Hathaway Inc. ("Berkshire") acquired BNSF in 2010. When it acquired BNSF, Berkshire paid a substantial premium over the railroad's pre-acquisition book value, which for STB regulatory costing purposes approximates $8,100,000,000. Under the current regulatory daisy chain, this $8,100,000,000 premium is included in BNSF's STB regulatory accounts, which are then fed into BNSF's Annual R-1 report, which R-1 data have been used by the Board's staff to create BNSF's 2010 Uniform Railroad Costing System ("URCS") data set (subject to appropriate adjustments by the Board at the conclusion of this proceeding) and will be used by the Board's staff to make annual determinations of BNSF's revenue adequacy.

Left unchecked, inclusion of the premium in the Board's URCS and revenue adequacy determinations will increase BNSF shippers' rates, decrease the amount of BNSF traffic subject to the Board's regulatory jurisdiction, and result in BNSF being found to be even more revenue inadequate, even though Berkshire paid a huge premium to acquire the rail carrier.

The Board can prevent these outcomes by exercising its statutory authority to adjust BNSF's URCS, and BNSF's revenue adequacy investment base, by excluding the premium. This is a mechanical exercise that can be accomplished simply by the Board's staff. The Board should prevent these outcomes as a matter of basic fairness to BNSF's captive customers.

It is fundamentally unfair for a captive BNSF customer to pay higher rates simply when BNSF's ownership has changed hands. For this reason, all other regulators of utility rates do not permit the pass-through of premiums in cases where captive customer rates will increase as a result, nor should the Board.

BNSF has argued that the $8,100,000,000 premium should be included in its URCS, and revenue adequacy investment base, because this result is mandated by Board "precedent" in railroad acquisition cases. However, the Board's stated policy in acquisition cases is to consider acquisition premium issues on a "case-by-case" basis and the acquisition cases cited by BNSF are factually distinguishable because they involved transactions where the Board, or its predecessor, found the public ultimately benefited because the transactions produced lower rates and improved service. In contrast, Berkshire's acquisition of BNSF produces higher rates for captive shippers and no service improvements.

BNSF has also argued that Generally Accepted Accounting Principles ("GAAP") require the inclusion of the premium in BNSF's URCS and in its revenue adequacy investment base. However, GAAP is intended to govern financial reporting, not regulatory ratemaking, and it has long been held by both courts, and other agencies, that reasonable accounting does not translate automatically into reasonable rates. Indeed, that is why other regulatory bodies depart from GAAP by not inflating regulated rates with acquisition premiums which, if allowed, would increase captive consumers' rates.

Finally, BNSF contends that premium-infused costs should be used for ratemaking purposes because they are more "accurate." This assertion is incorrect. Both "predecessor" costs (*i.e.*, costs calculated without including the premium) and "acquisition" costs (*i.e.*, costs calculated with the premium) are "accurate" if calculated correctly. They are simply measuring different costs, and BNSF's "accuracy" arguments are simply exercises in misdirection because there is no defense to the indefensible: increasing captive BNSF shippers' rates simply because BNSF's ownership has changed hands.

Summary Dated: March 6, 2012